123

Supreme Court, U.S.
FILED

081162 JAN 27 2009

OFFICE OF THE CLERK

No. 09-

IN THE

Supreme Court of the United States

MPR GLOBAL, INC.

Petitioner,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION AKA F.D.I.C., organization of the United States Government,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

LARRY ROTHMAN & ASSOCIATES
LARRY ROTHMAN *
California State Bar No. 72451
City Plaza
1 City Boulevard West, Suite 850
Orange, California 92868
(714) 363 0220 Telephone
(714) 363 0229 Facsimile
tocollect@aol.com E-Mail
* Counsel for Petitioner and of Record

QUESTIONS PRESENTED

1 When a federal agency files a lawsuit in state court, does the federal court have to honor the state court judgment under the Rooker-Feldman doctrine?

2 Does the federal agency waive the administrative process under Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) when it files a lawsuit prior to the commencement of the claim period?

RULE 29.6

Petitioner, pursuant to Rule 29.6 states that it is a privately held company. There is no publicly held corporation that owns more than 10% of its stock

TABLE OF CONTENTS

QUESTIONS PRESENTED 3

RULE 29.6 4

TABLE OF CITED AUTHORITIES 6

TABLE OF APPENDICES 8

OPINIONS BELOW 9

STATEMENT OF JURISDICTION 9

RELEVANT PROVISIONS INVOLVED 10

STATEMENT 14

REASONS FOR GRANTING THE PETITION 17

CONCLUSION 26

APPENDIX 27

CERTIFICATE OF COMPLIANCE 48

TABLE OF CITED AUTHORITIES

Cases

Berke v. Resolution Trust Co. (Minn.App.1992) 483 N.W.2d 712, 715-716; 23
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)..... 18
F.D.I.C. v Lacentra Trucking, Inc. C.A. 11 (Fla) 1998, 157 F.3d 1292, rehearing en banc denied, rehearing and rehearing en..... 21
. Flagler Federal Sav. and Loan Ass'n of Miami v. Greenview Apartments, Ltd., S.D.Fla.1995, 897 F.Supp. 1431, affirmed 116 F.3d 1492, opinion vacated and superseded on rehearing 157 F.3d 1292, rehearing en banc denied, rehearing and rehearing en banc denied 170 F.3d 190, certiorari dismissed 119 S.Ct. 1493, 526 U.S. 1083, 143 L.Ed.2d 575. 21
Henrichs v. Valley View Development 474 F.3d 609, C.A.9 (Cal.),2007 20
In re Gruntz, 202 F.3d 1074, 1078 (9th Cir.2000)..... 18
Noel v. Hall, 341 F.3d 1148, 1154,-55 (9th Cir.2003)..... 18

Resolution Trust Corp. v. Binford (1992) 114 N.M. 560, 844 P.2d 810, 814-815; 23
Robbins v Foothill Nissan (1994) 22 .. 22
Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) 18
Rosa v. Resolution Trust Corp., supra, 938 F.2d at p. 392, fn. 12; 23
Ungar v. Ensign Bank, FSB, N.Y.A.D. 1 Dept.1994, 608 N.Y.S.2d 405, 196 A.D.2d 204 24

Statutes

28 U.S.C. § 1331 18
12 U.S.C.A. § 1821 ..\ 10, 21, 22, 23
28 U.S.C. § 1339 10
and 28 U.S.C. § 1257 18
California Civil Code Section 1717 14, 24
California Code of Civil Procedure Section 683.050 15

Treatises

American Jurisprudence, Second Edition, Section 887 19

TABLE OF APPENDICES

Appendix A – Opinion Of the United States Court of Appeals for the Ninth Circuit Dated and Decided December 9, 2008. PAGE 28

Appendix B – Opinion Of the United States Court of Appeals for the Ninth Circuit Dated and Decided October 30, 2008. PAGE 31

Appendix C– Order/Judgment of the United States District Court For the Central District of California Dated and Filed January 25, 2007. PAGE 37

OPINIONS BELOW

Neither the 9th Circuit Court of Appeals decisions nor the Order/Judgment of the United States District Court are reported.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Ninth Circuit, affirming the decision of the United States District Court's Order dismissing this case, was handled down October 30, 2008. A timely petition for rehearing was denied on December 9, 2008. This Court has jurisdiction pursuant to 28 U.S.C. § 1339.

RELEVANT PROVISIONS INVOLVED

12 U.S.C.A. § 1821

(4) Rulemaking authority relating to determination of claims

(A) In general

The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) Final settlement payment procedure

(i) In general

In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full

payment and disposition of the Corporation's obligations to such claimants.

(ii) Final settlement payment

For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) Final settlement payment rate

For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) Corporation authority

The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the

Corporation.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears--

(I) on the depository institution's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain--

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

STATEMENT

The Resolution Trust Corporation as conservator for Platte Valley Savings (RTC) filed a lawsuit against Robert Ferrante and Henry Penso basically for breach of contract on a promissory note and foreclosure in the California State Court – Orange County Case No. 618731. In that lawsuit, it also requested costs and attorney fees subject to the reciprocal provisions of California Civil Code Section 1717. Cavalierly, it even submitted a Memorandum of Costs including attorney fees that it claimed **prior** to the Court ruling on the case (It was a bench trial). The Defendants in that action **disproved** RTC'S case and **judgment was entered in favor of the Defendants on November 10, 1994.** The Court also awarded costs and attorney fees to the Defendants in that manner. RTC appealed the case and transferred its claim/liability to FDIC.

FDIC dismissed the appeal in 1997 **and the judgment against FDIC (for money) became final.** FDIC refused to pay the attorneys fees and costs as ordered by the State Court. The FDIC then issued a completely worthless certificate to the Assignor. The claim for collection of the judgment for attorney fees and costs **(payable in money)** had been assigned to MPR GLOBAL, INC. "MPR" and the action in which this Petition was based was brought in the United States District Court as an action on judgment pursuant to California Code of Civil Procedure Section 683.050). LARRY ROTHMAN had never been paid his attorney fees and out of pocket costs in the underlying action for the successful legal services rendered and has remained counsel for MPR. Presumably, the attorneys for RTC and FDIC were paid for their legal services **(in money)** for their unsuccessful prosecution of the underlying complaint unsuccessful appeal and are still being paid for attempting to avoid payment based upon the Judgment rendered in State Court.

FDIC asked the District Court to dismiss this case based apparently on two arguments:

1) The prevailing Defendants are only entitled to a certificate under FIRREA.

2) FIRREA deprives this Court of jurisdiction.

The Appellant, MPR GLOBAL, INC., argued that under the Rooker-Feldman doctrine discussed in this Petition, FDIC cannot collaterally attack the trial court judgment in the State Court which has been final. Since this action was filed within 10 years of the underlying case becoming final, the only allowable defense for this action to be attacked is the statute of limitations running on California Code of Civil Procedure Section 683.50(which has not run).

It should be noted that MPR has only requested that the State Judgment be renewed by its action on the judgment. See California Code of Civil Procedure Sections 683.50. FDIC is attempting to collaterally attack the underlying judgment. FDIC'S predecessor in interest failed to prevail or contest successfully the MPR'S predecessor's right to attorney fees (in money) in the underlying action. Even if the Rooker-Feldman Doctrine did not

apply, "FIRREA" as also discussed in this Petition only applies to pending claims prior to judgment if the RTC or FDIC were a party. The underlying action has already resulted in a judgment against FDIC and any claims procedure does not apply.

MPR opposed the Motion. The Trial Court ruled in favor of FDIC after oral argument. See Appendix C. the Ninth Circuit Court affirmed the Trial Court's Ruling. See Appendix B. It also denied Petitioner's Petition for Rehearing. See Appendix A

REASONS FOR GRANTING THE PETITION

1

When a federal agency files a lawsuit in state court, does the federal court have to honor the state court judgment under the Rooker-Feldman doctrine, thus paying the judgment in money?

Does the federal agency waive the administrative process under FIRREA when it files a lawsuit prior to the commencement of the claim period?

The Rooker-Feldman doctrine takes its name from Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). Rooker-Feldman, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. The United States Supreme Court is the only federal court with jurisdiction to hear such an appeal. Rooker-Feldman is a statute-based doctrine, based on the structure and negative inferences of the relevant statutes rather than on any direct command of those statutes. See, e.g., In re Gruntz, 202 F.3d 1074, 1078 (9th Cir.2000) (en banc) ("Rooker-Feldman is not a constitutional doctrine. Rather, the doctrine arises out of a pair of negative inferences drawn from two statutes: 28 U.S.C. § 1331 ... and 28 U.S.C. § 1257...."). See also, Noel v. Hall, 341 F.3d 1148, 1154,-55 (9th Cir.2003).

According to the thesis, American Jurisprudence, Second Edition.

XIV. District Courts, D. Jurisdiction, 5. Federal-Question Jurisdiction, a. In General,

"**§ 887. Exhaustion of other remedies as necessary—Effect of state judgment**

Under the Rooker-Feldman doctrine, the lower federal courts are barred from reviewing the final judgment of a state's highest court since the review of such a determination is an exercise of appellate jurisdiction available only in the United States Supreme Court.[FN1] When a case seeks review of a state court judgment or is inextricably intertwined with a state court judgment, federal courts, with the exception of the United States Supreme Court, lack subject-matter jurisdiction to decide the matter.[FN2] Thus, district courts have no jurisdiction over challenges to final state court decisions, even if those challenges allege that the state court's action was unconstitutional.[FN3] A district court may not entertain an original action in which it is alleged that a state court violated the United States Constitution by giving effect to an unconstitutional state statute.[FN4] Indeed, the invocation of the Constitution does not necessarily

establish the district court's jurisdiction over a case because a district court has no authority to review final judgments of a state court in judicial proceedings since a review of such judgments may be had only in the United States Supreme Court.[FN5]

The Rooker-Feldman doctrine applies regardless of whether a party to the state court proceedings raises constitutional or nonconstitutional challenges to the state court's judgment.[FN6] The Rooker-Feldman doctrine also bars jurisdiction of collateral attacks on lower state court rulings that have not yet been upheld in the highest state court.[FN7]"

See also the recent cases of Henrichs v. Valley View Development 474 F.3d 609, C.A.9 (Cal.), 2007.

2

Even if the Rooker-Feldman doctrine discussed previously did not exist, FIRREA,. 12 U.S.C.A. § 1821, does not affect substantive rights of parties, but instead merely created new procedures for adjudicating existing rights, and FIRREA thus properly could be applied to lawsuit **pending** at time of

statute's enactment. Flagler Federal Sav. and Loan Ass'n of Miami v. Greenview Apartments, Ltd., S.D.Fla.1995, 897 F.Supp. 1431, affirmed 116 F.3d 1492, opinion vacated and superseded on rehearing 157 F.3d 1292, rehearing en banc denied, rehearing and rehearing en banc denied 170 F.3d 190, certiorari dismissed 119 S.Ct. 1493, 526 U.S. 1083, 143 L.Ed.2d 575.

According the F.D.I.C. v Lacentra Trucking, Inc. C.A. 11 (Fla) 1998, 157 F.3d 1292, rehearing en banc denied, rehearing and rehearing en banc denied 170 F.3d 1980, certiorari dismissed 119 S. Ct. 1493, 526 U.S. 1083, 143 L.Ed 2nd 575, if the RTC chose to litigate claims brought by lender prereceivership, and having made that election, cannot invoke FIRREA (requiring administrative claim procedures).

The Appellant in this action argues that it would have been unfair to require the Appellant's predecessor in interest to apply for a claim once the State Court already adjudicated the merits of his decision. A great injustice will result if FDIC can relitigate claims that it filed in the State Court by

causing some application claim to be required to be filed.

In Robbins v Foothill Nissan (1994) 22 Cal.App.4th 1769, Federal and state courts have concurrent jurisdiction over suits which are filed prior to appointment of Federal Deposit Insurance Corporation (FDIC) as receiver against banking or other savings institution which is subject to receivership. Federal Deposit Insurance Act, § 2[11] et seq., as amended, 12 U.S.C.A. § 1821 et seq. State courts are not deprived of jurisdiction over lawsuits filed prior to appointment of Federal Deposit Insurance Corporation (FDIC) as receiver for failed depository institution, pursuant to provision of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), stating that after conclusion of 180-day claim review process the claimant 'may request administrative review of claim or file suit on such claim, or continue action commenced before appointment of receiver, in district or territorial court of United States. Federal Deposit Insurance Act § 2[11](d)(6)(A), as amended, 12 U.S.C.A. § 1821(d)(6)(A). It is the general rule that jurisdiction is

determined at the time the action is filed and cannot be divested by subsequent actions or events. Rosa v. Resolution Trust Corp., supra, 938 F.2d at p. 392, fn. 12; Berke v. Resolution Trust Co. (Minn.App.1992) 483 N.W.2d 712, 715-716; Resolution Trust Corp. v. Binford (1992) 114 N.M. 560, 844 P.2d 810, 814-815; generally, subject matter jurisdiction attaches at time action is filed and cannot be divested.

The RTC/FDIC chose the forum in which it litigated the State Claim. The State Court ruled against it. Now, it cannot claim that it requires the prevailing party in the State Claim to relitigate the claim through an administrative procedure. That would be grossly unfair and it was not the intention of Congress to require such a process.

"**Continue**," within meaning of Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) providing that filing of claim with Resolution Trust Corporation (RTC), as receiver for failed institution, **shall not prejudice any right of claimant to continue any action which was filed before appointment of receiver, could only be interpreted to mean case pending in state court prior to**

appointment of receiver may be continued in that court and that, under FIRREA, concurrent jurisdiction exists between state and federal courts. Ungar v. Ensign Bank, FSB, N.Y.A.D. 1 Dept.1994, 608 N.Y.S.2d 405, 196 A.D.2d 204. The State Court Action that the Complaint. The Trial Court seemed to believe that it was MPR GLOBAL'S Predecessor's duty to contest the worthless certificate unilaterally issued by the FDIC. The FDIC does not differentiate between a claim and a judgment that it prosecuted in State Court. Once judgment has been entered against the FDIC, itself, it cannot require claims to be filed.

In the judgment sued upon in this action, the RTC (having the choice to file in Federal or State Court), chose to file and to submit under California State Court jurisdiction by filing in Orange County Superior Court. The contract it sued on contained a provision for attorney fees so under California Civil Code Section 1717, it requested these in its complaint and requested the attorney fees by filing a Memorandum of Costs for Attorney Fees in accordance with Section 1717

prior to the Court ruling. FDIC is thus **estopped** from now denying it has to pay attorney fees through an administrative hearing to the Plaintiff.

On or about January 17, 1997, and within ten (10) years of the filing of the underlying action (which is called Federal Deposition Insurance Corporation v. Lancer Landing Limited, Orange County Superior Court Case No. 618731), the remitter was issued on the appeal of that case and the judgment in favor of the Defendants in that action became final. That judgment is now in the sum in excess of $497,193.44 and the Defendant in this action is obligated to pay that judgment to the Plaintiff, MPR GLOBAL, INC., which is the current assignee and owner of the judgment in **money**.

CONCLUSION

From the above and forgoing reasons, Petitioner respectfully requests this Court to grant review of this matter.

.

DATED: March 13, 2009

LARRY ROTHMAN & ASSOCIATES

LARRY ROTHMAN
ATTORNEY
FOR THE PLAINTIFF/APPELLANT:
MPR GLOBAL, INC.

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE 9TH CIRCUIT

No. 07-55244
D.C.No. CV-06-04689-

MPR GLOBAL, INC.,
DDP Central District of California, Los
Plaintiff - Appellant,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, an organization of the
United States Government a/k/a FDIC,
Defendant - Appellee.

ORDER

Before: W. FLETCHER and PAEZ, Circuit Judges, and DUFFY. District Judge.

Judges Fletcher and Paez have voted to deny the petition for rehearing en banc; and Judge Duffy so recommends

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether

to rehear the matter en bane.
Fed. R. App. P. 35.
The petition for rehearing en bane, filed November 14, 2008, is DENIED.
The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation

NOT FOR PUBLICATION

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF

APPEALS

FOR THE NINTH CIRCUIT

No. 07-55244

D.C. No. CV-06-04689-DDP

MEMORANDUM

MPR GLOBAL, INC.,

Plaintiff - Appellant,

V.

FEDERAL DEPOSIT INSURANCE CORPORATION. an organization of the United States Government a/k/a FDIC

Defendant - Appellee.

_____/

Appeal from the United States District Court for the Central District of California

Dean D. Pregerson, District Judge, Presiding

Submitted October 24, 2008" Pasadena. California

This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: W. FLETCHER and PAEZ, Circuit Judges. and DUFFY, District Judge.

MPR Global, Inc. ("MPR") appeals the dismissal of its suit for lack of subject matter jurisdiction based on failure to exhaust administrative remedies under the Financial Institutions Reform. Recovery and Enforcement Act of 1989 ("FIRREA").

On March 29, 1995, a California state court ordered the Resolution

Trust Corporation ("RTC"), as receiver for Platte Valley Savings ("PVS"). to pay costs and attorneys' fees to MPR's predecessors in interest. MPR's predecessors in interest filed a claim on this judgment with the receiver, in accordance with the FIRREA claims process. On December 11. 1996, the Federal Deposit Insurance Corporation ("FDIC"), which succeeded the RTC. allowed the claim and paid that judgment in full with a receiver's certificate, which federal law permits. *See Battista v.FDIC* 195 F.3d 1113, 1116 (9th Cir. 1999). On June 1, 2000, following public notice, the FDIC closed the PVS receivership. On July 27, 2006, MPR, having received an assignment of the judgment, filed an action in federal district court against the FDIC as former receiver for PVS. MPR claimed that the "apparently

---

The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

worthless" receivers' certificate did not satisfy the state court judgment and requested that the judgment be renewed.

Under FIRREA, claimants must request administrative review or file suit within 60 days following the FDIC's initial determination with respect to their claims. *See* 12 U.S.C. § 1821(d)(6). If the claimant fails to do either, then the "claimant shall have no further rights or remedies with respect to such claim." § 1821(d)(6)(B).

MPR's predecessors indisputably failed to exhaust administrative remedies by neglecting to request administrative review within 60 days following the FDIC's payment of the claim with a receiver's certificate. Therefore, I\4PR has not satisfied the jurisdictional prerequisite for suit. *Intercontinental Travel Marketing, Inc. v. F.D.1. C.*, 45 F.3d 1278, 1282 (9th Cir. 1994) ("No court has jurisdiction .. . until the exhaustion of this [' 1821] administrative process."). Likewise, MPR's predecessors indisputably failed to file suit within 60 days following receipt of the receiver's certificate. The failure to do so triggers a statute of limitations provision that bars MPR's

claim. *See §* 1821(d)(6)(B).

MPR's claim does not satisfy any of the narrow exceptions to the mandatory § 1821 process recognized by the Ninth Circuit. *See McCarthy v. F.D.I. C.*, 348 F.3d 1075, 1077-80 (9th Cir. 2003).

We hold that the district court properly determined that it lacked subject matter jurisdiction because MPR and its predecessors in interest failed to exhaust their administrative remedies. We hold further that MPR's claim is time barred under § 1821(d)(6)(B).

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF

CALIFORNIA – WESTERN DISTRICT

Case No. CV 03-6655 GPS(AJWx)

ORDER GRANTING DEFENDANT'S MOTION

MPR GLOBAL, INC..

Plaintiffs,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION AKA F.D.I.C., an organization of the United States Government.

Defendant.

This matter comes before the Court on motion by the defendant Federal Deposit Insurance Corporation (FDIC) to dismiss under !Federal Rule of Civil Procedure 12(b) for Lack of subject matter jurisdiction. Based on review of the documents submitted by both parties, the Court grants the motion and adopt the following order.

I. BACKGROUND

This case arises from the failure of Platte Valley Savings of Gering, Nebraska Platte Valley was placed in receivership with the Resolution Trust Corporation (RTC) appointed as receiver in 1990. (Mot Ltd. Robert Ferrante and Henry Penso in Orange County Superior Court that same Year. :d. Ferrante and Pens: are the= predecessors in interest of MPR. Global. ('Opp. at 3.) Ultimately,- RTC lost and a judgment was entered in favor of Ferrante in 1994. (Mot. at 2.) Ferrante moved for attorney's fees and costs, which the court awarded March 29, 1995; in the amount of $231,533.05. :d.

The FDIC succeeded RTC as the receiver for Platte Valley by operation of law on January I, 1996. Id. Ferrante filed a claim on the judgment as part of the administrative claims process pursuant to the Financial :institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),12 U.S.C. § 1821(d) (Mot. at 2-3) On December 11, 1996, FDIC issued Receiver's Certificate of Proof of Claim No. 11 to Ferrante and his attorney, Larry Rothman, for the value of the judgment plus interest in the amount of $279,633.42. (Riche Decl. Ex. A.) Rothman represents

the plaintiffs this matter. (Opp. at 1) Neither Rothman or Ferrante filed an action to contest that Receiver's Certificate.

The FDIC, after exhausting the assets of Platte Valley, published an intent to terminate the receivership in both the Federal Resister and USA Today in 1999 (Mot. at 3.; Riche Decl. Exs. B & C.) The receivership was subsequently terminated and Platte Valley ceased to exist on June 1, 20.00. (Mot. at 3; Riche Decl. Ex. D.) MPR Global, as the assignee of the judgment, filed this suit July 27, 2006, claiming the FDIC in its corporate capacity is liable for $497,193.44(Opp at 9.) MPR asks this Court to renew the underlying judgment (Opp at 4-5)

The FDIC brings this motion under Federal Rule of Civil Procedure 12 (b), arguing that the Court does not have subject matter jurisdiction. (Mot. At 2.). In its motion, the FDIC first argues the case is moot because the FDIC in its corporate capacity cannot be liable for acts or omissions of the FDIC in its receivership capacity, and the receivership is closed. (Mot. at 3-6.) Thus "there is neither an entity against which liability can be asserted nor any assets from which a money judgment could ever be satisfied." (Mot. at *4.)* FDIC next argues that

FIRREA effectively strips this Court of jurisdiction in this matter because neither MPR Global nor its predecessors in interest followed the administrative procedures contesting a claim. (Mot. at 7.) MPR Global in its opposition does not address either of these arguments and instead argues the FDIC submitted to California state law by its predecessor in interest RTC's filing a suit in California state court. (Opp. at 7-8.) According to MPR Global, this means that California Civil Code section 1717, printed in its entirety in the Opposition, must be enforced. (Opp. at 5-7.)

II. DISCUSSION

A. Mootness

Article III of the United States Constitution requires the federal courts to confine themselves to deciding actual cases and controversies. See U.S. Const. art. III, § 2, cl. 1. Part of this requirement is that a live controversy exist throughout all stages of litigation. Gator.com Corp. v. L.L. Bean, Inc., 398 F.3d 1125, 1128-29 (9th Cir. 2005). Where a case is valid at filing but is subsequently rendered invalid, the federal courts must dismiss the case as moot. Id.

As a technical matter, the Court is not convinced that this case has been mooted. There has not been a change in circumstances in the six months since the

filing of this action that would render the court unable to provide any meaningful relief. See West v. Sec'y of the Dep't of Trans., 206 F.3d 920, 925 n.4 (9th Cir) 2000. Mootness is an inquiry into the existence of an actual controversy, but the FDIC's argument instead goes to its liability in its corporate capacity. That issue goes to the merits of the case, not to whether the parties lack a legally cognizable interest in the outcome of the case. See City of Erie v. Pap's A.M., 529 U.S. 277, 287 (2000). Accordingly the case will not be dismissed on mootness grounds.

B Subject Matter Jurisdiction

Next, the Court must consider FDIC's 12(b) (1) motion to dismiss for lack of subject matter jurisdiction under FIRREA. This issue should be decided first, because a lack of subject matter jurisdiction precludes any decisions on the merits by this Court. E.g., Roberts v. Corothers, 612 F.2d 1173, 1177 (9th Cir. 1987)

FIRREA strips all courts of jurisdiction over any claims asserting a right to assets of a failed institution where administrative remedies have not been exhausted 12 U.S.C. 1621(d)(13)(D) ; McCarthy v. FDIC, 346 F.3d 1075, 1077 (9th 2003). Thus the question of this Court's jurisdiction

turns on whether MPR Global and its predecessors in interest exhausted their remedies under FIRREA against the FDIC for satisfaction of the claim.

FIRREA's administrative procedures require claimants file any claim against the receiver, who then has 180 days to investigate and make a determination with respect to the U.S.C. g 182:(d) (5). If that claimant is dissatisfied with the determination, either in amount or priority, the claimant has sixty days to either request administrative review or to file suit in the appropriate district court. [12] U.S.C. § 1621(3)(6)(1). Failure to take action during that sixty-day window invokes a statute-of limitations that strips the claimant of any further rights to the claim except for recovery of any amount in the priority rights which terminate with the receivership. 12 U..S.C. 1821(d)(6)(2). This applies to claims against the defunct bank as well as actions against the FDIC after its receivership appointment. McCarthy, 348 F.3d at 1081.

It is clear here that, upon receiving the Receiver's Certificate, MPR Global's predecessors in interest did nothing. It did not petition for review in terms of priority nor did it file a suit in an applicable district court seeking review. MPR Global was issued the certificate on December 11, 1996 and filed this suit July 27, 2006, apparently in

the mistaken belief that the only applicable statute of limitations would be the ten year limit under state law. See Cal. Code Civ.. P. § 663.50. Upon the filing and analysis of their claim for attorney's fees from the receiver in satisfaction of the judgment, MPR Global accepted the Receiver's Certificate, its amount, and its priority. It in essence agreed to wait in line to take their allotted share of the assets given to them and bear the risk that those assets would be exhausted before their priority was reached. When it received none upon the receivership's termination because of their priority, !%21. Global waited six years and then filed this suit.

It is unquestioned that the FDIC may pay creditors with receiver's certificates instead of cash. Battista v. FDIC,F.3d 1113, 1116 (9th Cir. 1999) (quoting RTC v. Titan Fin. Corp., 36 F.3d 891, 892 (9th Cir. 1994)). If MPR Global and its predecessors in interest wanted a cash Payment instead of the "apparently worthless certificate," it needed to challenge the award and priority within sixty days of receiving it consistent with FIRREA's administrative procedures. It did not. Accordingly, FIRREA strips this Court (and any other court) of jurisdiction to hear the matter.

MPR Global asserts that it is merely

asking this Court for renewal of the state court judgment. It asserts both in its opposition and at argument that the FDIC's argument is barred by the Rooker-Feldman doctrine, which prohibits collateral attacks on a state court judgment in federal court. For support, MPR Global relies on a recent decision by the Ninth Circuit in Henrichs v. Valley View Development, No. 04-56470, F.3d (9th Cir. Jan16,2007) available at 2007 WL 92675. In Hendrichs, the losing Party in a quiet title action in the California courts sued in this district to have the underlying judgment thrown out on FIRREA grounds. Hendrichs argued because the bank holding a prior note on the property had entered receivership, after which the FDIC as receiver conveyed title to Hendrichs, that the FDIC interests were implicated invoking the FIRREA exhaustion requirement. The Ninth Circuit held that FIRREA was not implicated because the FDIC was not a party, and the underlying state court action was not against the FDIC as receiver. Neither of these two facts are present here.

MPR Global also argues that the FDIC subjected itself to California law when its predecessor in interest, the RTC, filed suit in California court. Among those California laws is Civil Code

section 1717, which provides for the award of attorneys fees and costs to the prevailing party in an action on contract. See Cal. Civ. Code 1717. MPR Global argues it is inequitable to require a party losing to the FDIC to pay attorneys fees in cash while allowing a prevailing party against the FDIC to be paid in a certificate. Civil Code section 1717 does not provide in its terms requirements for a means or method of tender. The Court does not disagree with MPR Global that it would be inequitable for the FDIC to be exempt from paying attorneys fees to prevailing parties against it. However, the federal statutes authorizing the FDIC to act as receiver allow those debts to be paid by receiver's certificates instead of cash. Battista 195 F.3d at 1116. MPR Global's characterization of this action as the renewal of a state court action is not accurate because that state court judgment has been paid. MPR Global received a judgment under state law against a federal entity. That federal entity satisfied the judgment, as it is authorized to do under federal law, with receiver's certificates., Rather than challenge that process contemporaneously and demand cash, MPR Global instead waited several years and attacked the entire statutory scheme in this Court.

FIRREA does not permit such attacks.

III CONCLUSION

For the foregoing reasons, the FDIC's motion to dismiss will be GRANTED and the present case will be DISMISSED for want of subject matter jurisdiction.

IT IS SO ORDERED

.

DATED: January 22, 2008
/S

DEAN D. PREGERSON
United States District Judge

CERTIFICATE OF COMPLIANCE

I, LARRY ROTHMAN, declare as follows:

1. That I am an attorney, licensed to practice law in all Courts of the State of California and the United States Supreme Court and that I have personal knowledge of all facts set forth in this Declaration. Forth in this Declaration or base this statements on the best of my information and belief. As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 3,223 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was signed in Orange, California, on March 13, 2009.

_____

LARRY ROTHMAN,
DECLARANT